

REMARKS

There are clear errors in the Examiner's rejections in this case. In addition, rejections of the claims offered by the Examiner are a result of clear errors of fact.

In the Response filed December 6, 2007, to an Office Action mailed September 21, 2007, Applicants provided arguments in response to the 35 USC §101 rejection that several claim limitations from independent Claims 1 and 9 indicate a useful and tangible result, namely, the act of "storing" and the act of "writing." First, it is not understood by the Applicants how "storing" and "writing" may not possibly be tangible and useful. Neither of these actions are an abstract idea, law of nature, or naturally occurring phenomena. Second, in the subsequent Final Office Action mailed February 19, 2008, the Examiner made a clear error by failing to substantively respond to Applicants' arguments. More specifically, the Examiner, in the "Response to Arguments" merely restates the Applicants arguments without stating anything further. The Examiner responded "[t]he arguments have been fully considered but they are not persuasive." (Office Action, p. 3). Rather than providing any substantive response, the Examiner has made a blanket response with no assertions on which to support his position.

In addition, the Examiner has made a clear error by failing to make a correct rejection under 35 USC §112, 2nd paragraph. The Examiner has made a §112, 2nd paragraph rejection stating that Claims 1-8, 10-17, 19, and 20 are rejected as being incomplete for omitting an essential step. The Examiner continues by stating that the omitted steps are "determining a required recovery time, wherein the required recovery time indicates a maximum length of time that is allowed for recovering after said database failure." Nothing more is stated.

MPEP 706.03(d) "Rejections Under 35 U.S.C. 112, Second Paragraph" state the requirements for rejections under 112, second paragraph. Under Examiner Note 3. , the section states "Give the rationale for considering the omitted steps critical or essential." However, the Examiner has failed to provide any rationale whatsoever. Nothing in the Written Specification discloses that the limitation is "critical" or "essential" and the Applicants do not understand why the limitation is required. The rejection may be seen in the Office Action mailed February 19, 2008, page 5, in which the same rejection is again presented to the Applicants.

In the Response filed December 6, 2007, to an Office Action mailed September 21, 2007, Applicants provided detailed arguments pointing out with particularity, where cited references by the Examiner failed to teach or suggest limitations recited by the claims. In the subsequent Final Office Action mailed, the Examiner made clear error by not offering a substantive response to the arguments presented by Applicants with respect to the rejection under 35 USC §103. Specifically, Applicants pointed to the limitation "a user-specified value that corresponds to the amount of work that is required during a redo phase recovery" in Claim 1. In the "Response to Arguments", Examiner explains that obviousness can be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestions, or motivation found to do so. The Examiner then continued by citing several sections in the references. It is clear error that the Examiner pointed to sections in references that do not teach or suggest the limitation in Claim 1 (Office Action dated February 19, 2008; p. 3-4). Applicant is unable to determine how the sections cited relate to the limitation in Claim 1 and Examiner has failed to state such a reason.

In addition, the Examiner performed another clear error by not offering any explanation of why the cited sections of the reference actually teach or suggest the limitation in Claim 1, but instead explains the concept of obviousness, and then MPEP 2111 (claims given the broadest interpretation). (Office Action, “Response to Arguments”, p. 3-5). It is unclear why these concepts are being explained when Applicants did not specifically discuss these issues.

Applicants also made substantial arguments with respect to the Claim 9 limitation “...value based on a maximum number of data blocks reads that is able to be performed in the required recovery time”. It is further clear error that the Examiner made no response with respect to this argument.

For at least the above reasons, clear error has occurred in the examiner’s rejections in this case and in the rejections offered by the examiner to the claims. Claims 1 and 9 are independent claims and each of the remaining pending claims depend, directly or indirectly from Claims 1 and 9, are analogous to Claims 1 and 9, or depend from a claim that is analogous to Claims 1 and 9. Therefore, all of the pending claims are patentable and the rejections should be withdrawn.

Applicants request that the rejections of all the pending claims be reversed.